

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HANS ALEXANDER,

Plaintiff,

- against -

07 Civ. 6042 (LTS) (DFE)

REPORT AND RECOMMENDATION
TO JUDGE SWAIN

CITY OF NEW YORK,
NEW YORK POLICE DEPT.,
P.O. PALINKAS of the 48th Pct,
and Thirteen (13) Unknown (or)
John Doe Police Officers,

Defendants.

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DOUGLAS F. EATON, United States Magistrate Judge.

Hans Alexander, a *pro se* prisoner, signed this Complaint on June 16, 2007. In the Complaint, at page 6, ¶ VI(B) and (C), he was asked: "A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? B. If your answer to A is YES, describe each lawsuit." Mr. Alexander described only one: 07 Civ. 3039(KMW), and he wrote that Chief Judge Wood dismissed it "for some non[-]sensical reason."

On July 11, 2007, District Judge Laura Taylor Swain referred 07 Civ. 6042 to me for general pretrial supervision.

On September 25, 2007, I issued a Memorandum and Order that said, in part (with my emphasis now added in bold type):

2. A review of the Court records indicates that the complaint was filed on June 26, 2007, and there is no proof that the summons and complaint have been served upon any of the defendants. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint [i.e., by October 24, 2007], the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good

cause for the failure, the court shall extend the time for service for an appropriate period...

3. I direct Mr. Alexander to complete all action needed for formal service of the summons and complaint upon City of New York and upon P.O. Palinkas. For this purpose, plaintiff must fill out the forms provided by this Court's Pro Se Office and forward them to the U.S. Marshal. If plaintiff needs more forms, he should request them from the Pro Se Office.

4. If plaintiff does not, **by October 24, 2007**, send me proof of service or good reasons for failure to make service, then **I will recommend that the District Judge dismiss this lawsuit.**

To date, plaintiff has not complied with ¶ 4 of my September 25, 2007 Memorandum and Order. On December 12, 2007, the U.S. Marshal's Office told my law clerk that they have not received any documents from Mr. Alexander with respect to 07 Civ. 6042.

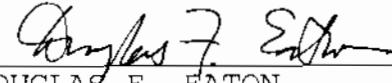
However, my law clerk learned that Mr. Alexander has filed two duplicative cases. Despite his representation at page 6, ¶ VI(B) and (C), Mr. Alexander had a case against the same defendants that deals with the same facts: 07 Civ. 2679(DLC). It was filed on April 2, 2007, and the U.S. Marshal's Office served the summons and complaint upon the three defendants on November 5, 2007; 07 Civ. 2679 is still pending before Judge Cote.

In short, Mr. Alexander has caused two different District Judges to be assigned to two cases dealing with the same facts but receiving different docket numbers. I do not know why he did this, but his commissary account will be docked for two filing fees.

I recommend that Judge Swain dismiss the complaint in 07 Civ. 6042(LTS) (DFE), for failure to comply with my order dated September 25, 2007. Mr. Alexander will not be harmed by such a dismissal; he can pursue his claims against these defendants in his earlier-filed lawsuit (07 Civ. 2679), which is pending before Judge Cote.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, any party may object to this recommendation within 10 business days after being served with a copy (i.e. by January 7, 2008) by filing written objections with the Clerk of the U.S. District Court and mailing copies (a) to the opposing party, (b) to the Hon. Laura Taylor Swain, U.S.D.J. at Room 755, 500 Pearl Street, New York, NY 10007 and (c) to me

at Room 1360, 500 Pearl Street. Failure to file objections within 10 business days will preclude appellate review. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam); 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72, 6(a), and 6(e). Any request for an extension of time must be addressed to the Judge Swain.


DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
December 13, 2007

Copies of this Report and Recommendation are being sent to:

Hans Alexander
241-06-15866
North Infirmary Command
15-00 Hazen Street
E. Elmhurst, NY 11370

Pro Se Office
U.S. District Courthouse
500 Pearl Street, Room 230
New York, NY 10007

Hon. Laura Taylor Swain

Hon. Denise L. Cote
(solely for information purposes, since she is assigned to 07 Civ. 2679(DLC))

Muriel Goode-Trufant, Esq.
Deputy Chief, Special Federal Litigation
New York City Law Department
100 Church Street
New York, NY 10007
(solely for information purposes, since her division will probably be assigned to 07 Civ. 2679(DLC))